

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3296-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES L. ANDERSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

PER CURIAM. James L. Anderson appeals from a judgment of conviction for battery to a peace officer. The state public defender appointed Attorney Ruth S. Downs as Anderson's appellate counsel. Downs served and filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32(1), STATS. Anderson did not respond. After an independent review of the record as mandated by *Anders*, we conclude that any further appellate proceedings would lack arguable merit.

Anderson pled guilty to felony battery to a peace officer as a repeater, contrary to §§ 940.20(2) and 939.62, STATS. The trial court imposed an eight-year sentence consecutive to another sentence Anderson was serving.

The no merit report addresses whether Anderson's plea was entered knowingly, intelligently and voluntarily, and whether the trial court erroneously exercised its sentencing discretion.¹ Appellate counsel advised this court that Anderson does not challenge his plea, but requests review on whether the trial court erroneously exercised its sentencing discretion. Based on Anderson's request, we address that issue.

On appeal, our review of the sentence is limited to whether the trial court erroneously exercised its discretion. *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary sentencing factors are the gravity of the offense, the character of the offender and the need for public protection. *Id.* at 427, 415 N.W.2d at 541. The weight given to each sentencing factor is within the trial court's discretion. *Cunningham v. State*, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

The trial court considered the gravity of the offense. It commented that this offense was very serious because violence against a police officer evinces a disrespect for the law and encourages the use of force by the police.

The trial court considered Anderson's character. It noted that Anderson's substance abuse was the underlying cause of this crime because he needed money to support his habit. It also noted that Anderson previously refused treatment while on parole supervision for another crime. The trial court rejected a less severe sentence "because [Anderson is] doing bad things, and the stack of bad things is growing."

The trial court considered the need for public protection. Because Anderson refused drug treatment and was unsuccessful in completing probation imposed for other crimes, it concluded that a prison term was

¹ Appellate counsel asserts that there was no basis to move for sentence modification.

appropriate because "the court views [Anderson] as a threat." The trial court concluded that the public needs protection from Anderson because his history demonstrates his willingness to commit crimes to support his drug habit.

The trial court considered the sentencing factors. In addition to the parties' recommendations, the trial court considered the eleven-year maximum sentence and the presentence report author's recommendation of a ten-year sentence before it imposed an eight-year sentence. The trial court properly exercised its sentencing discretion. We agree with appellate counsel's description, analysis and conclusion that pursuing any challenge to the sentence would lack arguable merit.

Upon our independent review of the record as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit. Accordingly, we affirm the judgment of conviction and relieve Attorney Ruth S. Downs of any further appellate representation of Anderson.

By the Court. — Judgment affirmed.